

**Matter of Benson**  
**Del. Supr. No. 135, 2001 (6/15/01)**  
**Board Case No. 41, 2000**

**Disciplinary Rules:** DLRPC 1.15(b), 1.15(d) and I.G. No. 2, 8.4(d)

**Sanctions Imposed:** Public Reprimand and Two-Year Probation

In an opinion dated June 15, 2001, the Delaware Supreme Court imposed a public reprimand and two-year period of probation on Bonnie M. Benson, Esquire (“Respondent”), for violations of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”). In a report from the Board on Professional Responsibility (“Board”) to the Court, the Board adopted a stipulation of facts and violations of the Rules, presented jointly by the Respondent and the Office of Disciplinary Counsel (“ODC”). The Board also approved the parties’ joint recommended sanction consisting of a private admonition and two-year private probation. The parties did not file objections to the Board’s report.

The Respondent admitted that she had failed to pay various federal and state employee and employer payroll taxes owed for her law practice in a timely manner from November 1997 to October 2000, in violation of Rule 1.15(b) (stating that “a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property”). The Respondent also admitted that she had failed properly to maintain her law practice books and records from November 1997 through May 31, 2000, in violation of Rule 1.15(d) and (for the period until January 1, 1999) former Interpretive Guideline No. 2, which set forth detailed and specific requirements for the maintenance of attorneys’ books and records. In particular, an audit conducted by Martin Zukoff, CPA, Auditor for the Lawyers’ Fund for Client Protection (“LFCP”), indicated that (1) no client trust account reconciliations were performed from November 1997 until May 31, 2000, and trust account deposit and check transactions were not entered in the Respondent’s accounting software program until May 31, 2000; (2) no monthly listings of client balances were prepared (showing client name, balance, and the total of all client balances) from November 1997 until May 31, 2000; and (3) no reconciliations of end-of-month cash balances to the total of client balances were performed from November 1997 until May 31, 2000.

The Respondent also admitted that she had engaged in conduct “prejudicial to the

administration of justice,” in violation of Rule 8.4(d), by (1) failing to file her 1998 and 1999 federal unemployment tax returns until October 2000, and by making consistently delinquent filings and payment in connection with other law practice payroll tax obligations; (2) certifying to the Court in 1998, 1999, and 2000 on her Certificates of Compliance that her law practice books and records were in compliance with the requirements of Rule 1.15; and (3) certifying to the Court in 1998, 1999, and 2000 that her tax obligations were paid in a timely manner.

The Board also adopted the parties’ stipulation as it related to aggravating and mitigating factors. Specifically, the parties stipulated that the following aggravating factors existed: (1) the Respondent had substantial experience in the practice of law; and (2) the Respondent engaged in a pattern of misconduct over an extended period of time. In mitigation, the Board considered that (1) the Respondent had no prior disciplinary record; (2) the Respondent undertook extensive remedial efforts to resolve her outstanding tax delinquencies, including the retention of an accountant and professional bookkeeping service; she escrowed funds necessary to meet her tax obligations; and she was complying with her ongoing books and records and tax obligations; (3) the Respondent fully cooperated with the ODC’s investigation; (4) other penalties were imposed in the form of IRS penalties and interest, and she incurred substantial accounting and other costs in implementing remedial measures; and (5) the Respondent demonstrated remorse and recognized the wrongfulness of her conduct. Additionally, the Board found as a mitigating factor that no client or third person was harmed by the Respondent’s conduct.

In its report, the Board recommended that the Court impose the sanction of a private admonition and two-year private probation. The Court approved the Board’s factual findings and its conclusions of law with regard to Ms. Benson’s violations of the Rules of Professional Conduct, but did not accept the Board’s recommended sanction. The Court stated as follows:

[P]ublic discipline affords the Court the opportunity to inform not only other members of the Bar but the general public that the Court takes very seriously a lawyer’s obligation to maintain orderly books and records and to fulfill tax obligations. A lawyer’s duty to maintain proper books and records exists for the purpose of protecting not only the lawyer but the lawyer’s clients, and the failure to fulfill that duty presents serious risks to the lawyer’s clients, even if no actual harm results. In our view, a public sanction will deter other lawyers from similar misconduct. Moreover, this Court’s means of monitoring a lawyer’s compliance with record keeping obligations is dependent upon the lawyer’s accurate, written representations as part of the annual registration process. Even though Benson did not make intentional

misrepresentations to the Court in this case, she clearly failed to exercise the required care and attention in making her annual certifications.

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A private sanction may be appropriate for a lawyer who has engaged in an isolated record-keeping violation or for an isolated incident involving delinquent payroll taxes, but Benson's negligent failure for three consecutive years to determine whether the certifications made to this Court in her 1998, 1999, and 2000 Annual Registration Statements were accurate reflects a pattern of misconduct that justifies the imposition of a public reprimand rather than a private admonition.

Accordingly, the Court imposed the sanction of a public reprimand and two-year public probation. The two-year period of public probation imposed by the Court is subject to terms including the following: regular reporting to the ODC in the form of an affidavit executed by a licensed certified public accountant; cooperation with the relevant federal and state governmental authorities with respect to the payment of payroll tax, penalty and interest obligations, maintenance of escrowed funds to satisfy back tax obligations after negotiations on her behalf by a licensed certified public accountant, and regular reports to the ODC about the status of these obligations; and cooperation with the ODC. The Respondent is also required, as a condition of the discipline imposed, to pay the ODC's costs and the costs of the LFCP audits.